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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1940.  
No. **212.**

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HURON HOLDING CORPORATION, a corporation, and NATIONAL  
SURETY CORPORATION, a corporation,  
*Petitioners,*

vs.

LINCOLN MINE OPERATING COMPANY, a corporation,  
*Respondent.*

---

**PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT  
AND BRIEF IN SUPPORT THEREOF.**

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# INDEX.

	PAGE
Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit .....	1
Statement .....	1
The Facts .....	2
Opinions Below.....	6
Basis for Jurisdiction.....	6
Questions Involved.....	6
Specification of Errors to be Urged.....	6
Reasons for Granting Writ.....	7
Brief in Support of Petition for Writ of Certiorari...	11
Opinions of the Courts Below.....	11
The Attachment Statutes of the State of New York	12
The Decision in <i>Shipman Coal Co. v. Delaware &amp; Hudson Co., et al.</i> , 219 App. Div. 312, 219 N. Y. S. 628 (1st Dept. 1927), (affirmed without opinion by the New York Court of Appeals, 245 N. Y. 567) .....	16
Argument .....	20
I—The Idaho District Court properly recognized and gave effect to the attachment proceedings which concededly in all respects complied with and were fully authorized by the laws and decisions of the State of New York.....	20
II— <i>Erie Railway Co. v. Tompkins</i> , 304 U. S. 64, changed the one time majority rule that a Federal judgment may not be attached in a foreign jurisdiction .....	23

TABLE OF CASES CITED:

	PAGE
<i>Chicago, Rock Island &amp; Pacific R. Co. v. Strum</i> , 174 U. S. 710, 43 L. ed. 1144.....	22
<i>Erie Railway Co. v. Tompkins</i> , 304 U. S. 64	6, 7, 8, 16, 21, 23
<i>Freeman v. Alderson</i> , 119 U. S. 185.....	21
<i>Lincoln Mine Operating Company v. Huron Holding Corporation</i> , 27 Fed. Supp. 720.....	5, 16, 22, 23
<i>Shipman Coal Co. v. Delaware &amp; Hudson Co., et al.</i> , 219 App. Div. 312, 219 N. Y. S. 628, aff'd 245 N. Y. 567 (1927) .....	3, 7, 8, 16, 19, 20, 22, 25
<i>Swift v. Tyson</i> , 16 Pet. 1, 10 L. ed. 865 (1842):.....	8

OTHER AUTHORITIES CITED:

Judicial Code, Section 240(a), as amended by Act of February 13, 1925 (43 Stat. 938; 28 U. S. C. A., Sec. 347(a)) .....	6
New York State Civil Practice Act:	
Sections 902 <i>et seq.</i> .....	3, 12, 13, 14, 15, 19, 20
14 American Jurisprudence, 383, Par. 189.....	21

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**Petition for a Writ of Certiorari to the United States  
Circuit Court of Appeals for the Ninth Circuit**

*To the Honorable, the Chief Justice and the Associate  
Justices of the Supreme Court of the United States:*

Your petitioners respectfully show as follows:

**STATEMENT.**

This is a petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Ninth Circuit, entered April 30, 1940 (Tr. 79), which reversed two judgments of the District Court of the United States for the District of Idaho, Southern Division, each entered May 4, 1939 (Tr. 61-62).

One of the said District Court judgments granted a motion made by the petitioner, Huron Holding Corporation, for satisfaction of a judgment entered March 3,

1938 in the said District Court in favor of the respondent and against the said petitioner, in a law case for damages and costs in an Idaho statutory claim and delivery action (Tr. 1-2). The other judgment of said District Court denied the respondent's motion for judgment against the petitioner, National Surety Corporation, on the surety's supersedeas bond (Tr. 4-6), staying execution pending an appeal from the said District Court claim and delivery judgment.

### THE FACTS.

On March 3, 1938, the respondent obtained a judgment against the petitioner, Huron Holding Corporation (hereinafter called "Huron") in the District Court of the United States for the District of Idaho, Southern Division (hereinafter called "District Court"), in an Idaho statutory claim and delivery action, for damages involving an unlawful detention of personal property in the amount of \$6,730.70 and \$79.42 costs (Tr. 1-2). Huron's motion for a new trial was denied on April 16, 1938 (Tr. 3), and on May 31, 1938, it appealed said judgment to the United States Circuit Court of Appeals for the Ninth Circuit (hereinafter called "Circuit Court"), pursuant to an order of the District Court allowing such appeal (Tr. 3-4). On said appeal, the necessary undertaking and supersedeas bond in the sum of \$10,000 was executed by the petitioner, National Surety Corporation (hereinafter called "Surety Company"), approved and filed on May 31, 1938 (Tr. 4-6).

On June 28, 1938, while the above appeal was pending, Manufacturers Trust Company, a New York corporation (hereinafter called "Trust Company"), commenced an action in the Supreme Court of the State of New York,

County of New York (hereinafter called "State Court"), against the respondent on an unpaid promissory note in the sum of \$10,000. The respondent being a non-resident and not doing business in New York, the Trust Company procured the issuance of a warrant of attachment on July 12, 1938 (Tr. 17-23, 24-26), pursuant to and in full accordance with the provisions of Sections 902 et seq. of the New York State Civil Practice Act, and as interpreted by the New York Courts in *Shipman Coal Co. v. Delaware & Hudson Co., et al.*, 219 App. Div. 312, 219 N. Y. S. 628, affirmed by the New York Court of Appeals in 245 N. Y. 567 (1927).

Acting upon said warrant of attachment, the Sheriff of New York County on July 12, 1938 attached the aforementioned District Court claim and delivery judgment in favor of respondent and against Huron, by serving said warrant in the City of New York upon Huron, a resident of New York, and in which State only it was doing business and had its sole assets, and which service was accompanied by an inventory and appraiser's report and return, showing the value of the property attached to be the amount of the said District Court judgment (Tr. 26-27, 29-30). On July 15, 1938, Huron filed a certificate with the Sheriff of New York County, acknowledging that it was indebted to the respondent in the amount of the said District Court judgment and that it had not as yet paid any part of said judgment (Tr. 30-31). On July 23, 1938, the summons and complaint in the State Court action was duly served upon the respondent in Boise, Ada County, State of Idaho, by the Deputy Sheriff of said Ada County (Tr. 20-21), in further pursuance of the laws of the State of New York.

On January 27, 1939, the attorneys for the respondent in the District Court action served and filed a notice of their lien in the sum of 33 $\frac{1}{3}$ % of the recovery in said ac-

tion, which was filed pursuant to the statutes of the State of Idaho (Tr. 8-9).

The respondent having defaulted in the State Court action, on motion of the Trust Company made February 25, 1939, an order was made and entered on February 27, 1939 by the State Court, granting the Trust Company a judgment against respondent in the amount of \$15,842.02, and judgment in favor of Trust Company against respondent in said sum was accordingly entered on said date (Tr. 21-23). On February 28, 1939, the Trust Company caused an execution to be issued to the Sheriff of New York County on its judgment against the respondent, and which execution was stated to be directed against the property attached by the Sheriff by virtue of the aforementioned attachment proceeding (Tr. 27-28).

On March 1, 1939, pursuant to the aforementioned warrant of attachment, judgment and execution, Huron paid to the Sheriff of New York County \$4,805.55, which sum, less Sheriff's fees, was turned over by the Sheriff to the Trust Company to apply on its judgment against respondent (Tr. 12, 29, 39). On March 8, 1939, Huron paid to the attorneys for the respondent on their aforementioned filed attorneys' lien the sum of \$2,747.27, and, in connection with such payment, the respondent's attorneys on March 13, 1939 duly filed a partial satisfaction of judgment and full satisfaction of attorneys' lien thereon (Tr. 32-33). The total of these two payments by Huron exceeded the amount of the District Court judgment obtained by respondent against Huron on March 3, 1938.

The Circuit Court affirmed the District Court claim and delivery judgment on February 7, 1939, but did not file its mandate until March 13, 1939 (Tr. 6-8).

On March 13, 1939, based upon its foregoing payments to respondent's attorneys and the Sheriff of New York County, Huron made a motion in the District Court for

the satisfaction of the judgment theretofore obtained by respondent against it on March 3, 1938 (Tr. 9-31), and to which motion an amendment was filed by Huron on March 29, 1939 (Tr. 42-44).

On March 14, 1939, respondent made a motion for judgment against the Surety Company on the appeal bond (Tr. 33-35). To the respondent's motion, the Surety Company on March 22, 1939 filed an answer in opposition (Tr. 35-42), and filed an amendment to its answer on March 29, 1939 (Tr. 44-45).

These two motions were heard together by the District Court, and on May 4, 1939, the District Court filed findings of fact and conclusions of law on each motion, and determined that by virtue of the aforementioned payments by Huron, the judgment of the respondent against Huron had been completely satisfied and there was no liability on the part of the Surety Company to respondent (Tr. 46-60). Accordingly, on May 4, 1939, the District Court made and entered a judgment denying respondent's motion for judgment against the Surety Company (Tr. 61), and on the same date, made and entered a judgment granting Huron's motion for satisfaction of judgment (Tr. 61-62), rendering an opinion reported in 27 Fed. Supp. 720. From each of said judgments, the respondent appealed to the Circuit Court on August 3, 1939 (Tr. 62-63). On the latter appeal, the Circuit Court on April 30, 1940 reversed each of the said two District Court judgments, and entered judgment accordingly (Tr. 73-79).

It is this judgment of reversal rendered by the Circuit Court on April 30, 1940 that the petitioners seek the right to review before this Court on this petition for writ of certiorari.

### OPINIONS BELOW.

The opinion of the Circuit Court sought to be reviewed, dated April 30, 1940, is as yet unreported but is on pages 74 to 78 of the Transcript of Record herein. The opinion of the reversed Idaho District Court is reported in 27 Fed. Supp. 720.

### BASIS FOR JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938; 28 U. S. C. A., Sec. 347(a)).

### QUESTIONS INVOLVED.

The questions presented in this case are;

I. Was the Idaho District Court required to recognize and give effect to the attachment proceedings which concededly in all respects complied with and were fully authorized by the laws and decisions of the State of New York?

II. Has *Erie Railway Co. v. Tompkins*, 304 U. S. 64, changed the rule that a Federal judgment may not be attached in a foreign jurisdiction?

### SPECIFICATION OF ERRORS TO BE URGED.

Petitioners assign as error:

1. The refusal of the Circuit Court to recognize and give effect to the attachment proceedings which complied with and were fully authorized by the laws and

decisions of the State of New York, thus subjecting Huron to liability for double payment of the same judgment.

2. The determination by the Circuit Court that the Supreme Court of the State of New York did not acquire jurisdiction of the respondent in the action brought against it by the Trust Company by virtue of the attachment proceedings in the New York State Court.

3. The determination by the Circuit Court that the decision of this Court in *Erie Railway Co. v. Tompkins*, 304 U. S. 64, is not applicable to the case at bar and did not require an upholding of the validity of the attachment of the District Court judgment.

#### REASONS FOR GRANTING WRIT.

The petitioners contend herein that since the New York attachment proceedings fully complied with and were in all respects authorized by the laws and decisions of the State of New York, as expounded in the New York leading case on this point, *Shipman Coal Co. v. Delaware & Hudson Co., et al.*, 219 App. Div. 312, 219 N. Y. S. 628 (1st Dept. 1927) (affirmed without opinion by the New York Court of Appeals, 245 N. Y. 567), the Idaho District Court was required to give full recognition and effect thereto.

In accordance with the decision in *Shipman Coal Co. v. Delaware & Hudson Co.*, since Huron, respondent's judgment debtor, was present in and a resident of New York and had its sole assets there, the situs of the judgment was therefore in New York and properly subject to attachment therein. The decision of the Circuit Court is not in accordance with and misinterprets the principles laid down by this Court in *Erie Railway Co. v. Tompkins*,

304 U. S. 64, which reversed the principle laid down by this Court in its earlier decision in *Swift v. Tyson*, 16 Pet. 1, 10 L. ed. 865 (1842).

This Court, in *Erie Railway Co. v. Tompkins*, determined that there is no federal common law. Therefore, since there was and is no federal statute which invalidates the New York attachment provisions and decisions, the Circuit Court was in error in immunizing the District Court judgment and construing it as being untouchable in a foreign jurisdiction. The necessary effect of this is to reverse the Courts of the State of New York in the *Shipman Coal Co. v. Delaware & Hudson Co.* case, by holding that the federal judgment, without any federal statutory basis therefor, cannot be attached in a foreign jurisdiction.

Until the decision of this Court in *Erie v. Tompkins*, it had been held that a Federal judgment is not subject to garnishment or attachment in a foreign jurisdiction because the Federal Courts were not bound to recognize the decisions and interpretations of the State Courts and could proceed upon their own conception of Federal common law.

Petitioners contend that this Court in the *Erie-Tompkins* case changed that principle, so that Federal Courts are required to recognize and give effect to the attachment statutes of State Courts as well as the interpretation given those statutes by the decisions of the State Courts. Attachment of the liability evidenced by a Federal Court judgment presents no peculiar problem of Federal jurisdiction which should justify a departure from the broad principles of the *Erie-Tompkins* case. Whether the rule of that case has been correctly expounded is a question of far reaching import which can be answered only by this Court upon review of the judgment of the Circuit Court.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari may issue out of, and under the Seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, requiring the said Circuit Court to certify and send to this Court on a day certain, therein to be designated, a full and complete transcript of the record and all proceedings in said Circuit Court in the cause entitled, "Lincoln Mine Operating Company, a corporation, Appellant, vs. Huron Holding Corporation, a corporation, and National Surety Corporation, a corporation, Appellees", to the end that said cause may be reviewed and determined by this Honorable Court, as provided by law, and that said judgment of said Circuit Court of Appeals in said cause, and every part thereof, may be reversed by this Honorable Court, and for such other relief as may be just and proper, and your petitioners will ever pray.

Dated, New York City, July 1, 1940.

HURON HOLDING CORPORATION,  
a corporation, and  
NATIONAL SURETY CORPORATION,  
a corporation,

Petitioners,

By DANIEL GORDON JUDGE,  
Counsel for Petitioners.

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*Petitioners,*

VS.

LINCOLN MINE OPERATING COMPANY, a corporation,

*Respondent.*

---

**BRIEF IN SUPPORT OF PETITION FOR  
WRIT OF CERTIORARI.**

---

***Opinions of the Courts Below.***

The opinion of the Circuit Court sought to be reviewed, dated April 30, 1940, is as yet unreported but is on pages 74 to 78 of the Transcript of Record herein. The opinion of the reversed Idaho District Court is reported in 27 Fed. Supp. 720.

For the sake of brevity, we refer to the preceding petition for the following:

Basis for Jurisdiction, *supra*, p. 6;

Statement, *supra*, p. 1;

The Facts, *supra*, p. 2;

Specification of Errors to be Urged, *supra*, p. 6.

### ***The Attachment Statutes of the State of New York.***

The following are the applicable statutes, in pertinent part, of the State of New York, covering attachments under the Civil Practice Act:

"Sec. 902. In what actions attachment of property may be had. A warrant of attachment against the property of one or more defendants in an action may be granted upon the application of the plaintiff, as specified in the next section, where the action is to recover a sum of money only, as a tax or as damages for one or more of the following causes:

"1. Breach of contract, express or implied, other than a contract to marry. \* \* \*

"Sec. 903. What must be shown to procure warrant of attachment. To entitle the plaintiff to such a warrant, he must show that a cause of action specified in the last section exists against the defendant, and, if the action is to recover damages for breach of contract, that the plaintiff is entitled to recover a stated sum, over and above all counterclaims known to him. He must also show that the defendant

"1. Is either a foreign corporation or not a resident of the state. \* \* \*

"Sec. 912. Manner of attaching property and duties of sheriff, generally. The sheriff must execute the warrant immediately, by levying upon so much of the personal and real property of the defendant, within his county, not exempt from levy and sale by virtue of an execution, as will satisfy the plaintiff's demand, with the costs and expenses \* \* \*.

"Sec. 916. Levy upon cause of action, evidence of debt or claim to estate. The attachment may also be levied upon a cause of action arising upon contract; including a bond, promissory note, or other instrument for the payment of money only, negotiable or otherwise, whether past due or yet to become due, executed by a foreign or domestic government, state, county, public officer, association, municipal or other corporation, or by a private person, either within or without the state; which belongs to the defendant and is found within the county. \* \* \*

"Sec. 917. Method of making levy: A levy under a warrant of attachment must be made as follows:

"3. Upon other personal property, by leaving a certified copy of the warrant, and a notice showing the property attached, with the person holding the same; or, if it consists of a demand, other than as specified in the last subdivision, with the person against whom it exists \* \* \*.

"Sec. 918. Certificate of defendant's interest to be furnished. Upon the application of a sheriff holding a warrant of attachment, the president or other head of an association or corporation, or the secretary, cashier, or managing agent thereof, or a debtor of the defendant, or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant, must furnish to the sheriff a certificate, under his hand, specifying the rights or number of shares of the defendant in the stock of the association or corporation, with all dividends declared or incumbrances thereon; or the amount, nature and description of the property held for the benefit of the defendant, or of the defendant's interest in

property so held, or of the debt or demand owing to the defendant, as the case requires.

"Sec. 921. Inventory. The sheriff, immediately after levying under a warrant of attachment, must make, with the assistance of two disinterested freeholders, a description of the real property, and a just and true inventory of the personal property, upon which it was levied, \* \* \*.

"Sec. 233. \* \* \* The service must be made by a resident or citizen of the state of New York, or a sheriff, under-sheriff, deputy sheriff, constable, bailiff or other officer having like powers, and duties of the county or other political subdivision in which the service is made. \* \* \*

"\* \* \* Service without the state must be made and proof thereof must be filed within sixty days after the order is granted; otherwise the order becomes inoperative. Service without the state in lieu of publication is complete ten days after proof thereof is filed.

"Sec. 235. \* \* \* Where it appears by affidavit filed in the action or as part of the judgment roll in such action that a warrant of attachment, granted in the action, has been levied upon property of the defendant within the state, the summons may be served without an order, upon a defendant without the state in the same manner as if such service were made within the state, except that a copy of the complaint must be annexed to and served with the summons, and that such service must be made by a person or officer authorized under section two hundred and thirty-three of this act to make service without the state in lieu of publication. Proof of service without the state without an order shall be filed within

thirty days after such service. Service without the state without an order is complete ten days after proof thereof is filed.

"Sec. 969. Satisfaction of judgment from attached property. Where an execution against property is issued upon a judgment for the plaintiff in an action in which a warrant of attachment has been levied, the sheriff must satisfy it as follows:

"1. He must pay over to the plaintiff all money attached by him, and the proceeds of all sales of perishable property, or of any vessel or share or interest therein, or animals, sold by him, or of any debts, or other things in action collected or sold by him; or so much thereof as is necessary to satisfy the judgment.

"2. If any balance remains due, he must sell under the execution the other personal property attached, or so much thereof as is necessary, \* \* \*. If the proceeds of that property are insufficient to satisfy the judgment and the execution requires him to satisfy it out of any other personal property of the defendant, he must sell the personal property upon which he has levied by virtue of the execution. \* \* \*

"4. Until the judgment is paid, he may collect the debts and other things in action attached, and prosecute any undertaking, which he has taken in the course of the proceedings, and apply the proceeds thereof to the payment of the judgment."

***The Decision in Shipman Coal Co. v. Delaware & Hudson Co., et al., 219 App. Div. 312, 219 N. Y. S. 628 (1st Dept. 1927), (affirmed without opinion by the New York Court of Appeals, 245 N. Y. 567).***

This decision, together with the provisions of the New York Civil Practice Act covering attachments, recognized and given effect by the District Court in the light of the decision of this Court in *Erie Railway Co. v. Tompkins*, 304 U. S. 64, was the basis upon which the District Court entered its judgments in favor of the petitioners herein (27 Fed. Supp. 720), and with all of which the Circuit Court disagreed in its opinion accompanying its reversal (Tr. 74-78). There an action was commenced in the New York Supreme Court against Delaware & Hudson Company, a New York resident, and one Nahas, a resident of Pennsylvania, by means of a levy of a warrant of attachment on a certain indebtedness owed by the Delaware & Hudson Company to Nahas. The attachment property was embodied in two unsatisfied judgments recovered by Nahas against the Delaware & Hudson Company in the United States District Court for the Eastern District of Pennsylvania. The New York Court upheld the attachment. Because of the importance of that decision, we quote at length from the opinion (219 N. Y. S. 628, 630):

"There seems no ruling adverse to the contention that a judgment of a court of this state is an attachable debt, and, besides, it would also seem to be attachable as a 'cause of action arising upon contract.' That an action brought on a judgment recovered in a court of another state is a cause of action upon an implied contract within the meaning of section 902 of the Civil Practice Act prescribing the classes of actions in which a warrant of attachment may issue

cannot be gainsaid; and it would seem immaterial as matter of pure reason whether the original action in which judgment was recovered was in contract or in tort, since the cause of action was merged in the judgment which becomes a contract debt. The sole question then is whether the debt has its situs or is 'found' for purposes of attachment, within this state. Since the judgment, even though recovered in another court, represents a cause of action, debt, or demand, and it is not an 'instrument for the payment of money' within section 916, Civil Practice Act, it ought to be treated in all respects like any other debt, chose in action, or intangible personal property. It would not seem to constitute an unwarranted extension of the attachment statutes or any interference with the jurisdiction of other courts, or a lack of comity toward them, or be any infringement of public law between the states, to hold that a judgment debt has no fixed situs at the locality of the court in which it was established.

"There is no analogy whatever between instruments for the payment of money or 'evidences of debt' such as stocks, bonds, and notes and a foreign or domestic judgment. Therefore the cases which discuss the situs of notes or other instruments for the payment of money are not applicable to this question, because the paper in those instances representing the debt is capable of physical possession, and its situs is usually to be found at the locality where it is possessed. A judgment debt, however, has no actual location, such as physical property or a debt represented by physical property. The situs of a judgment debt, therefore, is probably in that locality where the court which renders it is established, subject also to the control of the courts in the jurisdiction in which its 'situs'

may be held to be for purposes of garnishment or other auxiliary processes.

"Jurisdiction *in rem* is only possible where the power of the court is sufficient to control the particular *res* in question, and, in the case of debts, the power of control for the purpose of attachment is to be found at the domicile of the debtor, as in this instance, for here is where the debt can be satisfactorily enforced and reduced to possession by reason of the control of the courts over the person and property of the debtor, the New York corporation.

"There is nothing in the language of our statute which would exclude from its operation a judgment debt recovered in the court of another state any more than a judgment debt recovered in a court of this state. The only requirement in the attachment statutes as to the situs of property made subject to attachment is that it must be 'found' within the county in which the levy is made.

"This, strictly construed, would only apply to physical property, and is an inappropriate use of the word applied to debts or other intangible property rights. Although the word is used in the statute, its scope is doubtless restricted to property over which the courts may properly exercise jurisdiction *quasi in rem* within constitutional limitations. Here the levy was made in New York county on the Delaware & Hudson Company, the judgment debtor, which is domiciled and has its principal office here, and therefore the indebtedness was 'found' here, if 'found' anywhere.

\* \* \* \* \*

"It is then immaterial in what physical locality a debt, or any other attachable intangible property

right or obligation which is not an 'instrument for the payment of money,' may have been created, or where it is to be performed, or where it may exist. It is immaterial, too, where the physical evidence thereof may be found. The ground of this rule is that the power of a court over those who reside within its territorial jurisdiction is superior to that of any other court, and that consequently the residence of the person owing the obligation must determine which of two courts has the superior right to divert the obligation for the benefit of defendant's creditors \* \* \*."

It is conceded that the Trust Company in its attachment proceeding complied with the foregoing provisions of the New York Civil Practice Act, and also proceeded in all respects with the principles laid down in the foregoing *Shipman v. Delaware & Hudson* case, since at no time did the respondent raise an objection in this regard. No answer was filed by respondent to Huron's motion in the District Court asking satisfaction of the Idaho judgment. That motion, undenied and unquestioned in relation to the facts, discloses compliance with the New York statutes and decisions (Tr. 10-12). The District Court's findings are to the same effect (Tr. 46-60).

As is observed from the brief filed by the respondent in the Circuit Court, the chief and practically the sole ground upon which it appealed thereto was on the claim that the attachment was invalid because the judgment attached was at the time on appeal and, therefore, was not a final judgment, a contention which was overruled by the Circuit Court in its opinion (Tr. 77). Indeed, that brief of the respondent, at page 25, states:

"The District Court's error was in extending that

case (*Shipman v. Delaware & Hudson*), which involved a judgment finally determined, not appealed, nor stayed, and not subject to appeal, to the dissimilar condition of the judgment here involved, and in misconceiving the issue here to be *situs*, rather than, as it is, the character as attachable property, of the District Court's judgment. \* \* \*

"But the case of *Shipman Coal Co., supra*, did conclude that a resident of New York, against whom judgments for damages for personal injuries had been recovered in a United States District Court in Pennsylvania, might be garnished in New York in an action therein against the judgment creditor. The basis of that holding shows that its scope is limited to a judgment which *at the time of seizure* was in all respects finally determined, then due and enforceable, not stayed by supersedeas, not contingent upon the result of appeal or retrial."

The grounds upon which the Circuit Court rendered its reversal were volunteered on behalf of the respondent by the Circuit Court.

### **Argument.**

#### **I.**

**The Idaho District Court properly recognized and gave effect to the attachment proceedings which concededly in all respects complied with and were fully authorized by the laws and decisions of the State of New York.**

The New York Civil Practice Act, as interpreted by the Courts of that State, *Shipman v. Delaware, supra*, has provided substantive attachment rights whereby the Trust Company was permitted to commence its action in

New York against respondent, based upon levy of what these laws and decisions construed to be an asset of respondent in the State of New York, namely, respondent's judgment against Huron, a New York resident who was conducting business and had its assets solely in New York. Huron, at the time of the attachment levy, being a New York resident, was subject to its jurisdiction and to the orders of the New York State Courts, and, accordingly, recognized the levy and orders of the State Court which Huron determined was in full accordance with the laws and decisions of New York. The unfortunate effect of the Circuit Court decision is to require Huron, and anyone else similarly situated, to act at their peril, and has the insidious effect of compelling New York residents to ignore and violate the statutes and court orders of that State.

Petitioners contend that this is the very result which this Court attempted to prevent by its decision in *Eric Railway Co. v. Tompkins*, *supra*, and which decision the Circuit Court held has no application to the case at bar (Tr. 78).

In *Freeman v. Alderson*, 119 U. S. 185, this Court said:

"The State has jurisdiction over property within its limits owned by non-residents and may therefore subject it to the payment of demands against them of its own citizens."

This principle is also set forth in 14 American Jurisprudence, 383, Par. 189, in these words:

"A state has uncontrolled jurisdiction over all property, real or personal, within its borders."

Certainly, it must be obvious that since the attached judgment was rendered in Idaho against Huron, a resi-

debt of and having its sole assets only in the State of New York, the judgment for all practical purposes was merely a court record in Idaho, and its actual situs as an effective right was in New York, in which state alone would the respondent have been able to forcibly collect the judgment. This compelling reasoning was adopted by the New York Court in *Shipman v. Delaware*, *supra*, and by the District Court in its decision, 27 Fed. Supp. 720.

This principle was also discussed at length in *Chicago, Rock Island & Pacific R. Co. v. Strum*, 174 U. S. 710, 43 L. ed. 1144, where this Court said:

"The idea of locality of things which may be said to be intangible is somewhat confusing. but, if it be kept up, the right of the creditor and the obligation of the debtor cannot have the same, unless debtor and creditor live in the same place. But we do not think it is necessary to resort to the idea at all, or to give it important distinction. The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. To do it, you must go to the domicile of his debtor, and can only do it under the laws and procedure in force there. This is a legal necessity, and considerations of situs are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. He, and he only, has something in his hands. That something is the *res*, and gives character to the action, as one in the nature of a proceeding *in rem*."

## II.

***Erie Railway Co. v. Tompkins*, 304 U. S. 64, changed the one time majority rule that a Federal judgment may not be attached in a foreign jurisdiction.**

The District Court, in applying the principle laid down in the *Erie-Tompkins* case, stated, 27 Fed. Supp. 720, at page 722: :

"Then the inquiry arises, does the principle laid down by the Supreme Court of New York when interpreting their state statute apply and come under the recent rule recognized by the Supreme Court of the United States in the case of *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 822, 82 L. Ed. 1188, 114 A. L. R. 1487, where it is said:

"'Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature of "general", be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.'

"It seems clear that the decision of the *Erie Railroad* case holds that 'the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by

its highest court in a decision is not a matter of federal concern'.

"And therefore the Supreme Court of the State of New York having held that the Courts of New York can acquire jurisdiction by the issuance of an attachment out of its courts and levy upon a judgment debt recovered in a Court of another State, it would seem that the New York Court had jurisdiction at the time of the entry of judgment in the case of *The Manufacturers Trust Company v. Huron Holding Corporation*."

The Circuit Court, in its opinion (Tr. 78), held that the District Court had erred in its conclusion and said:

"The district court below holds these decisions not applicable because of *Erie Railway Company v. Tompkins*, 304 U. S. 64. That decision it contends makes the validity of the attachment of the Idaho federal judgment determinable by the law of New York, which is claimed to be that the attachment is valid. That is to say, it resolves the conflict of laws controlling the two courts in favor of that of the attaching court. The Supreme Court holds the contrary."

"Furthermore, *Erie Railway Company v. Tompkins*, *supra*, 78, plainly states that 'Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State.' Obviously, the specific question here is not one of a mere local-state law but of the power of the United States district court, created and governed by acts of Congress, to issue execution to enforce its judgment or to render judgment on the supersedeas undertaking."

The Circuit Court's decision, in effect, refuses to follow the attachment statutes of the State of New York and the *Shipman v. Delaware* decision passed upon and affirmed by New York's highest Court. This, petitioners respectfully contend, is in complete violation of the principles laid down by this Court in *Erie v. Tompkins*, and should be reviewed and corrected by this Court.

Respectfully submitted,

DANIEL GORDON JUDGE,  
*Counsel for Petitioners.*